

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)	
)	Chapter 11 Case
R & S Heating & Air Conditioning, Inc.,)	
)	Case No. 10-35110-GFK
Debtor.)	
)	

**AMENDED NOTICE OF HEARING AND MOTION
TO SELL CERTAIN ASSETS OF THE ESTATE**

TO: The entities specified in Local Rule 9013-3

1. This Amended Motion replaces the Motion originally filed on April 21, 2011, as Docket Number 141. The sole purpose of this Amended Motion is to add one additional asset to the list of assets the Trustee seeks authorization to sell. Specifically, the Trustee seeks to add a 2007 Ford F150 Pick Up Truck. Changes made to the original Motion have been underlined below.

2. John R. Stoebner, Chapter 11 Bankruptcy Trustee (“**Trustee**”) of R & S Heating & Air Conditioning, Inc. (the “**Debtor**”), through his legal counsel, Lapp, Libra, Thomson, Stoebner & Pusch, Chartered, respectfully requests that the Court enter an order granting the relief sought herein and gives notice of hearing herewith.

3. The Court will hold a hearing on this Motion before the Honorable Gregory F. Kishel, United States Bankruptcy Judge, on May 18, 2011 at 10:30 a.m. in Courtroom 2A, at the United States Courthouse, 316 N. Robert Street, St. Paul, Minnesota.

4. Any response to this motion must be filed and served not later than May 13, 2011, which is five days before the time set for the hearing (including Saturdays, Sundays, and

holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

5. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing the Chapter 11 case of R & S Heating & Air Conditioning, Inc. was filed on July 13, 2010. Venue of this case and this motion in this district are proper pursuant to 28 U.S.C. §§ 1408 and 1409. The case is now pending before this Court.

6. This Motion arises under 11 U.S.C. § 363 and Fed. R. Bankr. P. 6004. This Motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 3. The Trustee seeks authorization to sell the following assets:

- a. 2000 Ford Econoline Van
Vehicle Identification Number 1FTNE24L0YHB38366
Mileage of 184,718
Fair Condition;
- b. 2003 Ford E350 Van
Vehicle Identification Number 1FTSE34L53HA03997
Mileage of 153,231
Fair to Good Condition;
- c. 2003 Ford F150 Pick Up Truck
Vehicle Identification Number 1FTRF172X3NA63262
Mileage of 193,063
Fair to Good Condition;
- d. 2003 Ford F150 Pick Up Truck
Vehicle Identification Number 2FTRF17273CA17748
Mileage of 96,936
Fair to Good Condition;
- e. 2007 Ford F150 Pick Up Truck
Vehicle Identification Number 1FTPX14V57FB27047
Mileage of 104,000
Good Condition;
- f. 1996 Monroe Bobcat Model 723 Series “C”

Serial Number 512728977;

g. Four (4) Vehicle Ladder Racks;

h. Surplus Equipment consisting of the following:

One (1) Pittsburg Seam Roll Forming Machine;
One (1) Snap Lock Seam Roll Forming Machine;
One (1) TDF Connection Roll Forming Machine;
One (1) Plasma Feeder Model M-5-16-12 with 3 Coil Feeder Rack;
One (1) 16 Gauge x 10 Ft Hand Brake;
One (1) 16 Gauge x 10 Ft Roto-Die Power Brake;
One (1) Clark Elect Fork Lift 6900# Capacity;
One (1) 48" x 16 Gauge Tennsmith Power Roll;
One (1) 6" x 14 Gauge Power Shear;
One (1) Spot Welder with 24" Throat;
One (1) 36" x 20 Gauge Tennsmith Driver Turner;
One (1) 48" x 20 Gauge Box and Pan Brake Complete;
One (1) Automatic Insulation Pin Spotter;
One (1) Platform Scissor Lift 30" x 96" x 20 Ft with Rubber Tires;
One (1) Platform Scissor Lift 42" x 96" x 20 Ft with Rubber Tires; and

i. Miscellaneous surplus tools and equipment (collectively, the "Assets").

7. Due to a decrease in business activity, the Debtor has reduced its number of employees.

8. The Assets are company vehicles, tools and equipment which are no longer necessary for the current operation of the Debtor's business.

9. The 2007 Ford F150 Pick Up Truck, more fully described in item 6e above, is subject to a lien in favor of Ford Motor Credit Company LLC. If the Trustee sells the 2007 Ford F150 Pick Up Truck, he will pay the lien in full.

10. Other than the lien on the 2007 Ford F150 Pick Up Truck, The Trustee does not believe that any entity other than the estate has any interest in the Assets.

WHEREFORE, the Trustee, through his undersigned counsel, moves the Court for an order (1) authorizing the sale of the Assets and (2) granting such other relief as the Court may deem just and equitable.

Dated: April 28, 2011

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

/e/ John R. Stoebner
John R. Stoebner (#140879)
Alyssa M. Troje (#391444)
Ralph V. Mitchell (#184639)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

Attorneys for John R. Stoebner, Trustee

VERIFICATION

The undersigned declares under the penalty of perjury that the facts contained in the foregoing Motion are true and correct to the best of my knowledge, information and belief.

/e/ John R. Stoebner
John R. Stoebner

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)
) Chapter 11 Case
R & S Heating & Air Conditioning, Inc.,)
) Case No. 10-35110-GFK
Debtor.)
)

**MEMORANDUM IN SUPPORT OF TRUSTEE’S MOTION
TO SELL CERTAIN ASSETS OF THE ESTATE**

John R. Stoebner, (“**Trustee**”), in the above-captioned Chapter 11 Case, respectfully submits this Memorandum in Support of his Motion to Sell Certain Assets of the Estate.

FACTS

The factual basis for this Memorandum is set forth in the verified Motion and is incorporated herein.

DISCUSSION

Use or Sale of Property Outside the Ordinary Course

In pertinent part, § 363(b) provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions. *See, e.g., In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Channel One Communications*, 117 B.R. 493 (Bankr. E.D. Mo. 1990) (applying the sound business purpose test of *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

The assets the Trustee seeks authorization to sell are company vehicles, tools, and equipment formerly used in connection with the Debtor’s business. The Debtor has reduced its

staff due to a decrease in business activity. Due to the reduced staff, the Assets are no longer necessary for the operation of the Debtor's business. The proposed sale will eliminate future expenses for maintenance of the Assets and add additional funds to the estate for the Debtor's continued business operations. Relief from future maintenance expenses and raising additional funds for the estate constitute sound business purposes and therefore justify the sale of the Assets under 11 U.S.C. § 363(b)(1). In addition, the Trustee requests that the order authorizing the sale of the Assets be effective immediately notwithstanding Fed. R. Bankr. P. 6004(h).

CONCLUSION

The Trustee requests an order authorizing it to sell the Assets consistent with the attached proposed order.

Dated: April 28, 2011

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

/e/ John R. Stoebner
John R. Stoebner (#140879)
Alyssa M. Troje (#391444)
Ralph V. Mitchell (#184639)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

Attorneys for John R. Stoebner, Trustee

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UNSWORN CERTIFICATE OF SERVICE

I, Lori A. Frey, declare under penalty of perjury that on April 28, 2011, I served copies of the following documents:

- 1) Amended Notice of Hearing and Motion To Sell Certain Assets of the Estate;
- 2) Memorandum In Support of Trustee's Motion To Sell Certain Assets of the Estate; and
- 3) *Revised* Order To Sell Certain Assets of the Estate
 - a. by first class mail postage prepaid to each party named on Exhibit A attached hereto.
 - b. by notice of the electronic filing to each party named below:
 - Tyler D. Candee tcandee@lapplibra.com, dwegler@lapplibra.com
 - Monica L. Clark clark.monica@dorseylaw.com
 - Amy L. Court alc@mcgrannshea.com, smh@mcgrannshea.com
 - Steven A. Ginther mn@dor.mo.gov
 - David G Hellmuth dhellmuth@hjlawfirm.com
 - Linda J. Jungers bankruptcy@szjlaw.com
 - Colin Kreuziger Colin.Kreuziger@usdoj.gov
 - Ralph Mitchell rmitchell@lapplibra.com, jpipp@lapplibra.com
 - Timothy D. Moratzka tdm@mcmlaw.com,
ldj@mcmlaw.com; jef@mcmlaw.com
 - T. Chris Stewart tchris@analawfirm.com, mai@analawfirm.com
 - John R. Stoebner jstoebner@lapplibra.com, lfrey@lapplibra.com; rtri@lapplibra.com; MN04@ecfcbis.com
 - US Trustee ustpreion12.mn.ecf@usdoj.gov
 - Marilyn J Washburn
MN_bank@riezmanberger.com; riezmanberger@gmail.com
 - Joseph Anthony Wentzell jwentzell@fosterbrever.com

Executed on: April 28, 2011

/e/ Lori A. Frey
Lori A. Frey, Paralegal
Lapp, Libra, Thomson, Stoebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

EXHIBIT A

R & S HEATING & AIR CONDITIONING
12600 CREEK VIEW AVENUE
SAVAGE, MN 55378

Glen Swan
Ace Supply Company Inc.
3825 Edgewood Avenue South
St. Louis Park, MN 55426

Tim Hinz
Twin City Windustrial Comapny
7910 Powell Road
Hopkins, MN 55343

Barbara Condit
SPS Companies, Inc.
6363 Highway #7
Minneapolis,, MN 55416

IRS OFFICE OF CHIEF COUNSEL
650 GALTIER PLAZA
380 JACKSON ST
ST PAUL MN 55101

MN DEPT OF REVENUE
COLLECTION ENFORCEMENT
551 BANKRUPTCY SECTION
PO BOX 64447
ST PAUL MN 55164

IRS AREA DIRECTORS OFFICE
WELLS FARGO PLACE
30 E 7TH STREET, SUITE 1222
MAIL STOP 5700
ST. PAUL, MN 55101

US ATTORNEY
600 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

SECURITIES AND EXCHANGE COMMISSION
BANKRUPTCY SECTION
175 W JACKSON BLVD STE 900
CHICAGO IL 60604

INTERNAL REVENUE SERVICE
SPECIAL PROCEDURES BRANCH
PO BOX 21126
PHILADELPHIA PA 19114

US TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH 4TH ST.
MINNEAPOLIS, MN 55415

Missouri Dept of Revenue
Bankruptcy Unit
Attn Steven A. Ginter
PO Box 475
Jefferson City, MO 65105-0475

Ford Motor Credit Co., LLC
c/o Stewart Zlimen & Jungers
Attn Linda Jeanne Jungers
2277 Hwy 36 W, #100
Roseville, MN 55113

Swervo Development Corp.
c/o Hellmuth & Johnson PLLC
Attn David G. Hellmuth
10400 Viking Dr., #500
Eden Prairie, MN 55344

Lennox National Acct. Serv.
c/o Dorsey & Whitney LLP
Attn Monica Clark
50 South 6th St., #1500
Minneapolis, MN 55402-1498

Trustees of Sheet Metal Local #10
Control Board Trust Fund
c/o Amy L. Court
McGrann Shea Carnival Straughn & Lamb
800 Nicollet Mall, #2600
Minneapolis, MN 55402

Anastasi & Associates, PA
Attn T. Chris Stewart
14985 60th St. No.
Stillwater, MN 55082

City of Savage
Payment Processing Center
PO Box 25470
St. Paul, MN 55125-0470

Emp. Security Commission
Of North Carolina
PO Box 26504
Raleigh, NC 27611-6504

Idaho State Tax Commissioner
PO Box 76
Boise, ID 83707-0076

Iowa Workforce Development
Attn: Tax Bureau
PO Box 4846
Des Moines, IA 50306-0411

Minnesota Use Tax
600 North Robert Street
St. Paul, MN 55101

Mississippi Dept of Empl Sec.
PO Box 22781
Jackson, MS 39225-2781

Montana Unemployment Insurance Center Bureau
PO Box 63369
Helena, MT 59604-6309

MN Dept of Revenue
PO Box 64651
St. Paul, MN 55164-0651

Montana Dept of Revenue
PO Box 6309
Helena, MT 59604-6339

South Dakota State Treas.
Dept of Revenue & Reg
PO Box 5055
Sioux Falls, SD 57117-5055

State of Arkansas
PO Box 9941 (Withholding)
Little Rock, AR 72203

State of Maryland Unemployment
PO Box 17291
Baltimore, MD 21297-0365

State of Idaho – Cashier
Idaho Dept of Labor
317 W. Main Street
Boise, ID 83707-0078

State of Maine
PO Box 1061
Augusta, ME 04322

Treasurer, State of Iowa
Iowa Dept of Revenue
PO Box 10411
Des Moines, IA 50306-4846

Treasurer – State of Maine
Maine Revenue Services
PO Box 1061
Augusta, ME 04322-1061

Vermont Dept of Taxes
Box 547
Montpelier, VT 05601-0547

West Virginia State Tax Dept
Internal Auditing Div.
PO Box 1667
Charleston, WV 25326-1667

Ford Motor Credit Company LLC
Dept 55953
P O Box 55000
Detroit MI 48255-0953

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Debtor.)
)

ORDER TO SELL CERTAIN ASSETS OF THE ESTATE

This matter came before the Court on May 18, 2011 on the Amended Motion of John R. Stoebner (“**Trustee**”) to sell certain assets outside the ordinary course of business under 11 U.S.C. § 363(b). Appearances, if any, were noted on the record. Based on the arguments of counsel, moving documents and the record made at the hearing, and the Court’s findings of fact and conclusions of law, if any, having been recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The Amended Motion to sell certain assets outside the ordinary course of business pursuant to 11 U.S.C. § 363(b) is granted.
2. The Trustee is authorized to sell the following assets:
 - a. 2000 Ford Econoline Van
Vehicle Identification Number 1FTNE24L0YHB38366;
 - b. 2003 Ford E350 Van
Vehicle Identification Number 1FTSE34L53HA03997;
 - c. 2003 Ford F150 Pick Up Truck
Vehicle Identification Number 1FTRF172X3NA63262;

- d. 2003 Ford F150 Pick Up Truck
Vehicle Identification Number 2FTRF17273CA17748;
- e. 2007 Ford F150 Pick Up Truck
Vehicle Identification Number 1FTPX14V57FB27047;
- f. 1996 Monroe Bobcat Model 723 Series "C"
Serial Number 512728977;
- g. Four (4) Vehicle Ladder Racks;
- h. Surplus Equipment consisting of the following:
 - One (1) Pittsburg Seam Roll Forming Machine;
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 - One (1) TDF Connection Roll Forming Machine;
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 - One (1) Clark Elect Fork Lift 6900# Capacity;
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 - One (1) 48" x 20 Gauge Box and Pan Brake Complete;
 - One (1) Automatic Insulation Pin Spotter;
 - One (1) Platform Scissor Lift 30" x 96" x 20 Ft with Rubber Tires;
 - One (1) Platform Scissor Lift 42" x 96" x 20 Ft with Rubber Tires; and
- i. Miscellaneous surplus tools and equipment.

3. The Trustee is authorized to sell the 2007 Ford F150 Pick Up Truck, more fully described in item 2e above, upon the condition that he will satisfy the lien in favor of Ford Motor Credit Company LLC.

4. The Trustee is authorized and empowered to execute any agreements or documents and take such other actions as may be reasonably necessary to carry out the foregoing action.

5. Notwithstanding Fed. R. Bankr. P. 6004(h), this Order shall take effect immediately upon entry.

Dated: _____, 2011

Gregory F. Kishel
Chief United States Bankruptcy Judge